

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

LYSSETTE MILAGROS SANTIAGO-ORTIZ,

Plaintiff,

V.

PUBLIC BROADCASTING SERVICE, et. al.,

## Defendants.

Civil No. 12-1964 (JAF)

## Defendants.

## **OPINION AND ORDER**

We must decide whether to dismiss an employee's Title VII, section 1983, and related

## 8 Commonwealth law claims against her former supervisor.

I.

## Background

13 Lissette Milagros Santiago-Ortiz sued several defendants connected to her former  
14 employer because she says they discriminated against her on the basis of her age, seniority  
15 status, gender and medical condition in violation of Title VII, 42 U.S.C. 1983 and  
16 Commonwealth law statutes. She claims the discrimination resulted in her illegal firing. Among  
17 the original defendants was Michelle De la Cruz, one of Santiago-Ortiz's colleagues  
18 (supervisors) at the time of the alleged discrimination. Michelle De la Cruz moves to dismiss the  
19 complaint against her. (Docket No. 36), and we grant the motion.

II.

## Legal Standard

23  
24 A plaintiff's complaint will survive a motion to dismiss if it alleges sufficient facts to  
25 establish a plausible claim for relief. See Fed.R.Civ.P. 12(b)(6); Ashcroft v. Iqbal, 556 U.S. 662,

1 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In assessing a  
2 claim's plausibility, the court must construe the complaint in the plaintiff's favor, accept all non-  
3 conclusory allegations as true, and draw any reasonable inferences in favor of plaintiff. San  
4 Geronimo Caribe Project, Inc. v. Acevedo-Vila, 687 F.3d 465, 471 (1st Cir. 2012) (citation  
5 omitted).

6 **III.**  
7 **Discussion**  
8

9 Title VII defines "employer" as "a person engaged in an industry affecting commerce  
10 who has fifteen or more employees ... and any agent of such a person." 42 U.S.C. §  
11 2000e(b). First Circuit precedent is clear, however, that employees cannot be held liable as  
12 individuals under Title VII. Fantini v. Salem State College, 557 F.3d 22, 30 (1st Cir. 2009)  
13 ("There is no individual employee liability under Title VII."); see also Albra v. Advan, Inc., 490  
14 F.3d 826, 830 (11th Cir. 2007); Powell v. Yellow Book U.S.A., Inc., 445 F.3d 1074, 1079 (8th  
15 Cir. 2006) ("Title VII addresses the conduct of employers only and does not impose liability on  
16 co-workers...."); Williams v. Banning, 72 F.3d 552, 555 (7th Cir. 1995) ("Because a supervisor  
17 does not, in his individual capacity, fall within Title VII's definition of employer, [Appellant] can  
18 state no set of facts which would enable her to recover under the statute."); Miller v. Maxwell's  
19 Intern. Inc., 991 F.2d 583, 587 (9th Cir. 1993) ("[It] is inconceivable that Congress intended to  
20 allow civil liability to run against individual employees."); Busby v. City of Orlando, 931 F.2d  
21 764, 772 (11th Cir. 1991) ("Individual capacity suits under Title VII are .... inappropriate. The  
22 relief granted under Title VII is against the employer, not individual employees whose actions  
23 would constitute a violation of the Act."). Therefore, we agree with Defendants' contention that  
24 Title VII offers no grounds for Santiago-Ortiz to bring suit against De La Cruz.

25 42 U.S.C. § 1983 creates a cause of action against those who, acting under color of state  
26 law, violate a plaintiff's Constitutional or federal rights. See 42 U.S.C. § 1983; Maine v.  
27 Thiboutot, 448 U.S. 1, 4 (1980).

1       While Section 1983 does not specify a statute of limitations, the Supreme Court has  
2 instructed federal courts addressing Section 1983 personal injury claims to follow the statute of  
3 limitations of the state in which the challenged action occurred. See Wilson v. Garcia, 471 U.S.  
4 261, 276 (1985);see also Muñiz Cabrero v. Ruiz, 23 F. 3d 607, 610 (1st Cir. 1994). Here, the  
5 applicable rule can be found in Article 1868 of the Puerto Rico Civil Code, 31 L.P.R.A. Sec.  
6 5198, which provides a one-year prescriptive period for tort actions. See De León-Otero v.  
7 Ruber, 820 F. 2d 18, 19-20 (1st Cir. 1987). In Puerto Rico, Section 1983 claims are subject to a  
8 one-year statute of limitations. Morales-

9       Tañón v. P.R. Elec. Power Auth., 524 F.3d 15, 18 (1st Cir.2008). The statute of limitations on  
10 such claims begins to run when the injury occurs, even if the plaintiff did not know of the  
11 discriminatory animus at that time. Marrero-Gutierrez v. Molina,491 F.3d 1, 5-6 (1st Cir.2007).

12       Here, Santiago-Ortiz claims she suffered adverse employment actions until her  
13 employment was terminated on February 1, 2011. Under Section 1983 the commencement of  
14 accrual for Santiago-Ortiz to file a complaint began running on the date her employment was  
15 terminated. Santiago-Ortiz filed complaint on November 28, 2012—almost one year and ten  
16 months after her dismissal. Therefore, all Section 1983 claims against De La Cruz are time  
17 bared.

18       Santiago-Ortiz also alleges violations of rights afforded by the Puerto Rico Civil Code.  
19 (Docket No. 16 at 35.) Specifically, Santiago-Ortiz alleges a violation of Law 100, which  
20 prohibits discrimination in employment on the basis of age, social condition and gender.  
21 (Docket No. 1 at 14.)

22       We have discretion to decline supplemental jurisdiction over the remaining  
23 Commonwealth law claims since we have dismissed all of the claims against De la Cruz over  
24 which we have original jurisdiction. See 28 U.S.C. § 1367(c)(3); see also United Mine Workers  
25 v. Gibbs, 383 U.S. 715, 726 (1966) (“if the federal law claims are dismissed before trial...the  
26 state claims should be dismissed as well). In exercising our discretion under § 1367(c), we must

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1 consider the issues of “judicial economy, convenience, fairness, and comity.” Che v.  
2 Massachusetts Bay Transp. Authority, 342 F.3d 31, X (1st Cir. 2003). Having considered these  
3 factors, we decline to exercise supplemental jurisdiction over Plaintiffs’ Commonwealth law  
4 claims. Therefore, we **DISMISS WITHOUT PREJUDICE** Santiago-Ortiz’ remaining  
5 Commonwealth law claims.

6 **IV.**  
7 **Conclusion**  
8

9 For the foregoing reasons, we hereby **GRANT** Defendant De La Cruz’ motion to  
10 dismiss.  
11

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 15th day of July, 2013.

14 S/José Antonio Fusté  
15 JOSE ANTONIO FUSTE  
16 U. S. DISTRICT JUDGE  
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